

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 00-65**  
November 3, 2000

RE: May psychiatrist serve as a private forensic psychiatrist in addition to his employment with the Department of Corrections?

DECISION: Yes, within limitations.

This opinion is in response to your October 10, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 3, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are the Chief of Psychiatric Services for the Kentucky Department of Corrections (the "Department"). In this position, you administer all psychiatric services provided to inmates in state prisons by recruiting, training and supervising psychiatrists who treat mentally ill inmates. Additionally, you review, revise, and develop policy that pertains to how these services will be coordinated. You also serve as the Medical Director for the Correctional Psychiatric Treatment Unit located at the Kentucky State Reformatory. This Unit provides intensive mental health treatment to the most severely mentally ill and dangerous inmates in the custody of the Department. Finally, you deliver direct patient care, such as evaluation, diagnosis and treatment to a small percentage of the psychiatric inmates within the state.

You would like to have additional employment as a private forensic psychiatrist. As a private forensic psychiatrist, you would be consulting and working for the public defender's or commonwealth attorney's office. You would provide expert testimony regarding the defendant's competency to stand trial, criminal responsibility at the time of the offense (sanity) and any other psychiatric issue that may have a bearing on the case. You note that the commonwealth attorney and public defender are charged with prosecuting or defending criminal defendants who have been charged with a crime but not convicted. In contrast, the Department serves inmates who have already been through a trial and have been found guilty of a crime.

You state that a possible overlap between the two positions could occur if you provide a forensic assessment for a case, and the defendant is convicted of a crime and then is placed in one of the state prisons. However, you do not believe that the involvement of a psychiatrist in a forensic case precludes his participation in the treatment of the related individual at a later time. You do believe ethical considerations will be raised if a psychiatrist performs a forensic assessment on an individual that he has treated previously. Because of this possibility, you have stated that you would not become involved in a private forensic case involving an inmate with whom you have had a direct treatment relationship. You ask whether or not this secondary employment presents a conflict of interest for you.

The Commission recommends that you review the provisions in KRS 11A.020 (1) below to ensure that your secondary employment does not present a conflict of interest.

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Additionally, the Commission takes note of the following provision in KRS11A.020 (2):

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

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Although the Commission believes that you may have secondary employment as a forensic psychiatrist, as you have pointed out you should not perform a forensic assessment on any individual whom you treat as part of your official duties, in order to avoid potential conflicts of interest. Additionally, the Commission believes because you are the Chief of Psychiatric Services for the Department, you should not perform a forensic assessment on any inmate that has been treated by a psychiatrist of the Department of Corrections during your tenure as Chief. Such action may violate the above provision in that you may be using or attempting to use your influence in a matter that involves a substantial conflict between your private interest and your duties in the public interest. Such action also may lead the general public to believe that you are using your official position to further your private interest.

The Commission does not believe that you are prohibited, as part of your official duties, from treating an individual convicted of a crime after you have performed a forensic assessment of the individual. Such treatment, as part of your official duties, does not appear to present any conflicts of interest.

If your service as a forensic psychiatrist involves an agreement with the Department of Public Advocacy, a state agency, then you would be subject to the provisions in the Model Procurement Code in KRS 45A.340(5) that provide:

(5) No officer or employee of an agency or appointee shall knowingly himself ...undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale, or purchase of the value of twenty-five (\$25) or more, made, entered into, awarded or granted by any agency, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.